

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

For Approval and Signature:

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5. Whether it is to be circulated to the Civil Judge? - No.

HEIRS OF JAISWAL M MOTILAL

MR PB MAJMUDAR for Respondent No. 2

ORAL JUDGEMENT

This Revision Application can be disposed of by a brief order as the controversy falls in a very narrow compass. The petitioner instituted Regular Civil Suit No.310 of 1973, praying for specific performance of an Agreement to Sell he had with one Jaiswal Maganlal Motilal, since deceased, the original defendant. It is not necessary to set out details of the suit as finally the suit was decreed by the trial court in favour of the petitioner. After obtaining a decree, the petitioner instituted Execution Application No.7 of 1989, claiming delivery of possession and he impleaded present respondents Nos. 2, 3 and 4 on the ground that they are the mortgagees. During the pendency of the execution proceedings, it appears that original defendant Jaiswal Maganlal Motilal expired with the result that his heirs and legal representatives are brought on record at serial Nos. 1(1) to (4) of the title cause. The execution application was rejected, saying that it is disposed of on the specious ground that the petitioner-original plaintiff had not made a prayer for possession in the original suit. The disposal of the execution application without effectively executing the decree is the bone of contention in the present revision application. In my view, without dilating further in the matter, the impugned order must be set aside. The fact remains that the petitioner had instituted suit for specific performance of the Agreement to Sell in respect of immovable property and what is more, the suit was decreed in his favour. Once the suit was decreed in his favour, the petitioner, as plaintiff, was entitled to execute the decree and either get the sale deed executed from the original defendant or through the assistance of the Court in accordance with Order XXI of the Code of Civil Procedure, 1908. It is inconceivable that merely because the petitioner had not made a prayer for possession, the decree in favour of the petitioner could be nullified on such a ground. Once the suit for specific performance is decreed, the natural consequence of the same is the execution of the sale deed, followed by possession and this is based on the principle that "title must follow possession". Therefore, the impugned order has to be set aside. Mr.Majmudar, learned counsel appearing for respondents Nos. 2, 3 and 4, is right when he says that even when the impugned order is set aside, the execution proceedings must go to its logical conclusion. In that he points out that it is open to respondents Nos. 2, 3 and 4 to prove their physical possession or to prove whatever their claim in respect of the suit property. In my view, there can be no dispute on this and even when the impugned order is set aside, the executing court has

to consider all aspects of the matter before granting relief to the petitioner. In this view of the matter, revision succeeds. The impugned order dated 16.9.1991 is quashed and set aside and the Executing Court is directed to take further steps in Execution Application No.7 of 1989 in accordance with law. Rule to the extent indicated above is made absolute. Parties are directed to bear their own costs.

In view of the valuable time lost during the pendency of the revision application before this Court, the Executing Court is directed to deal with the matter as expeditiously as possible.

(apj)